



**AFTAB PUREVAL  
HAMILTON COUNTY CLERK OF COURTS**

**COMMON PLEAS DIVISION**

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**April 27, 2017 02:42 PM**

**AFTAB PUREVAL**

**Clerk of Courts**

**Hamilton County, Ohio**

**CONFIRMATION 620124**

**WINTER ENTERPRISES LLC  
DBA FUN FACTORY**

**A 1702343**

**vs.**

**WEST BEND MUTUAL  
INSURANCE COMPANY**

**FILING TYPE: INITIAL FILING (IN COUNTY) WITH NO JURY  
DEMAND**

**PAGES FILED: 5**

EFR200

*APPENDIX 2*

Johanna Hutchins, 0069759  
Attorney for Plaintiff Winter Enterprises, LLC, dba Fun Factory

IN THE COURT OF COMMON PLEAS  
CIVIL DIVISION  
HAMILTON COUNTY, OHIO

WINTER ENTERPRISES, LLC

dba Fun Factory  
1631 Sherman Avenue  
Cincinnati, Ohio 45212

: Case No. \_\_\_\_\_  
: Judge \_\_\_\_\_

Plaintiff,

: **COMPLAINT FOR  
INSURANCE BAD FAITH**

vs.

WEST BEND MUTUAL INSURANCE CO.  
1900 South 18<sup>th</sup> Avenue  
West Bend, Wisconsin 53095

: Ordinary Mail Waiver Attached

:

Defendant.

:

Comes now the Plaintiff, by and through counsel, hereby complains and alleges against Defendant, WEST BEND MUTUAL INSURANCE COMPANY, a Wisconsin Corporation, as follows:

**GENERAL ALLEGATIONS**

1. The Plaintiff is and was at all relevant times hereto, an Ohio Limited Liability Company, engaged in business in the State of Ohio, Hamilton County, and a named insured under a policy of insurance issued by the Defendant, West Bend Mutual Insurance Company. A copy of the policy is attached as Exhibit A.

2. At all times relevant to the within action, Defendant West Bend Mutual Insurance Company was and remains a foreign Corporation, doing business in the

State of Ohio, namely providing commercial insurance to Ohio businesses, such as the Plaintiff.

3. At all times relevant to the within action, the Plaintiff was current on the premiums with the Defendant.

4. On August 28, 2016, the Plaintiff's insured business located at 1631 Sherman Avenue, Norwood, Hamilton County, Ohio, 45212, sustained a loss, damaging real property, contents and other business activities.

5. Shortly after the loss, the Plaintiff submitted a claim to the Defendant for the damages sustained.

**COUNT I**  
**(Breach of Contract)**

6. Plaintiff restates the General Allegations of this Complaint as if fully rewritten herein.

7. There is a valid and existing insurance agreement between the Plaintiff and the Defendant.

8. Plaintiff has complied with all obligations under the policy, including bringing this suit within the applicable statute of limitations, with the Defendant, and is entitled to the coverage afforded it under the West Bend Mutual Insurance Company Policy of Insurance.

9. Defendant has breached the agreement by, *inter alia*, refusing to properly and fully compensate the Plaintiff for its damages.

10. As a direct and proximate result of Defendant's breach, Plaintiff has sustained, and continues to sustain, damages to its real property, its contents in the

property, its business endeavors and good will, and other coverages afforded it under the policy.

**COUNT II**

**(Contractual Breach of the Implied Covenant of Good faith and Fair Dealing)**

11. Plaintiff restates the General Allegations and the Allegations contained in Count I of this Complaint as if fully rewritten herein.

12. There is implied in every contract a covenant of good faith and fair dealing.

13. Defendant and Plaintiff entered into a valid and existing insurance contract.

14. Defendant breached its duty of good faith and fair dealing by, *inter alia*, refusing to properly and fully compensate Plaintiff.

15. As a direct and proximate result of Defendant's breach, Plaintiff has sustained, and continues to sustain, damages to its real property, its contents in the property, its business endeavors and good will, and other coverages afforded it under the policy.

**COUNT III**

**(Tortious Breach of the Implied Covenant of Good faith and Fair Dealing)**

16. Plaintiff restates the General Allegations and the Allegations contained in Count I and II of this Complaint as if fully rewritten herein.

17. There is implied in every contract a covenant of good faith and fair dealing.

18. Defendant and Plaintiff entered into a valid and existing insurance contract.

19. Defendant breached its duty of good faith and fair dealing by, *inter alia*, refusing to properly and fully compensate Plaintiff.

20. As a direct and proximate result of Defendant's breach, Plaintiff has sustained, and continues to sustain, damages to its real property, its contents in the property, its business endeavors and good will, and other coverages afforded it under the policy.

21. Plaintiff has been required to retain the services of an attorney to commence this action and is entitled to attorney's fees and costs.

**COUNT IV**  
**(Bad Faith)**

22. Plaintiff restates the General Allegations and the Allegations contained in Count I, II and III of this Complaint as if fully rewritten herein.

23. The acts and omissions of the Defendant as complained of herein, and yet to be discovered in this matter, constitute bad faith.

24. Plaintiff sustained damages as a result of Defendant's bad faith.

25. Plaintiff is further entitled to punitive damages as a result of Defendant's bad faith.

26. Plaintiff has been required to retain the services of an attorney to commence this action and is entitled to attorney's fees and costs.

**COUNT V**  
**(Unfair Trade Practices)**

27. Plaintiff restate the General Allegations and the Allegations contained in Count I, II, III and IV of this Complaint as if fully rewritten herein.

28. Defendant has engaged in unfair trade practices, including Defendant's failure to properly settle Plaintiff's claim.

29. Plaintiff sustained damages as a result of Defendant's unfair trade practices.

30. Plaintiff is further entitled to punitive damages as a result of Defendant's unfair trade practices.

31. Plaintiff has been required to retain the services of an attorney to commence this action and are entitled to attorney's fees and costs.

WHEREFORE, pursuant to the General Allegations and Counts I, II, III, IV and V of the Complaint, Plaintiff demands judgment against Defendant West Bend Mutual Insurance Company in an amount in excess of \$25,000.00, attorney fees, costs expended herein, prejudgment and post judgment interest, and whatever other and further relief to which Plaintiff is entitled either in law or in equity.

Respectfully submitted,

*Johanna Hutchins*

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